

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YESSUH SUHYES HUSSEY,

Plaintiff,

-against-

MARIO SALGADO; PO MICHAEL
GABRIELE 3344; PA AO'S PARTNER
THOMAS WARD 21847,

Defendants.

23-CV-4342 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is proceeding *pro se*, brought this action in the United States District Court for the Eastern District of New York, which transferred it here.¹ In the complaint, Plaintiff names Mario Salgado and New York City Police Officers Michael Gabriele and Thomas Ward as defendants, and asserts claims arising from events occurring at a Guitar Center store in Manhattan on August 3, 2021. Plaintiff already has an action pending in this court against Salgado arising from the events on August 3, 2021. *See Hussey v. Salgado*, No. 23-CV-2905 (LTS) (S.D.N.Y.).

Plaintiff cannot maintain two actions in federal court against overlapping defendants arising out of the same incident. Because the complaint in this action names additional defendants and may contain some new or additional information, the Court concludes that it

¹ Because this action is being dismissed without prejudice as duplicative, and the complaint will proceed under a different docket number, the Court has not granted Plaintiff's request to proceed *in forma pauperis*. The Clerk of Court shall not charge Plaintiff the \$350.00 filing fee for this action, and the Warden or Superintendent having custody of Plaintiff shall not deduct or encumber funds from Plaintiff's prison trust account for this lawsuit.

should be filed as an amended complaint in *Hussey v. Salgado*, No. 23-CV-2905, and treated as a supplement to the original complaint.

In the attachments to this complaint, Plaintiff discusses claims against Louis A. Molina of the New York City Department of Correction arising in 2021 and 2022. (ECF 1-1, at 9-13.)

These allegations are wholly unrelated to the claims arising from the August 3, 2021, incident at the Guitar Center that are the subject of this suit. The Court therefore dismisses any claims arising from these allegations, without prejudice to Plaintiff's pursuing them in a separate action.

Accordingly, the Clerk of Court is directed to (1) excerpt pages 9-13 from the document filed at ECF 1-1 in the action under docket number 23-CV-04342, and remove these pages from that pleading; (2) file the complaint (ECF 1) and remaining pages in the attachments (ECF 1-1) from docket number 23-CV-4342, as an amended complaint in docket number 23-CV-2905; and (3) terminate the action under this docket number, 23-CV-4342, without prejudice to Plaintiff pursuing his claims in the action under docket number 23-CV-2905. Any further filings in connection with Plaintiff's claims arising from the August 3, 2021, incident at Guitar Center must be filed only in the action under docket number 23-CV-2905.

CONCLUSION

The Court directs the Clerk of Court to (1) excerpt pages 9-13 from the document filed at ECF 1-1 in this complaint (under docket number 23-CV-04342), and remove these from that pleading; (2) file this complaint (ECF 1) and remaining pages in the attachments (ECF 1-1), as an amended complaint in docket number 23-CV-2905; and (3) terminate the action under this docket number, 23-CV-4342, without prejudice to Plaintiff pursuing his claims in the action under docket number 23-CV-2905. No further filings shall be made under this docket number, 23-CV-4342.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is directed to enter judgment in this action.

SO ORDERED.

Dated: June 9, 2023
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge